

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

IN RE: ETHICON, INC.
PELVIC REPAIR SYSTEM
PRODUCTS LIABILITY LITIGATION

MDL NO. 2327

THIS DOCUMENT RELATES TO:

McIntyre v. Ethicon, Inc., et al. Civil Action No. 2:13-cv-25292

MEMORANDUM OPINION AND ORDER

Pending before the court is Defendants' Motion to Dismiss without Prejudice, filed on January 6, 2016, by defendants, Ethicon, Inc. and Johnson & Johnson (collectively "Ethicon") [ECF No. 10]. The plaintiff has responded [ECF No. 11], and the defendants have replied [ECF No. 12]. Thus, this motion is now ripe for my review.

The plaintiff filed two identical cases: 2:13-cv-2592 (the "first action") and 2:13-cv-33410 (the "second action"). In its motion to dismiss, Ethicon requests that the first action be dismissed without prejudice because it is duplicative of the second action. Ethicon argues that the first action should be dismissed because the plaintiff had not submitted a Plaintiff Profile Form ("PPF") in the first action, but had submitted a PPF in the second action.

In response, the plaintiff requests that the second action be dismissed without prejudice rather than the first. Ms. McIntyre states that, on January 14, 2016, she submitted her PPF to Ethicon in the first action; further, Ethicon suffered no

prejudice as a result of this late PPF given that they have had access to an identical PPF submitted by Ms. McIntyre in the second action.

In reply, Ethicon argues that, while they received Ms. McIntyre's late PPF in the first action on January 14, 2016, Ms. McIntyre's PPF is deficient because it fails to comply with Pretrial Order # 208, which requires updated Social Security and Medicare authorizations for PPFs. *See* Pretrial Order # 208, MDL 2327 [ECF No. 1818].

"[T]he plaintiff is master of his own cause of action," *Edmonds v. Norfolk & W. Ry. Co.*, 883 F. Supp. 89, 93 (S.D. W. Va. 1995), and on that basis, I **FIND** that the second action should be dismissed. I have entered an order today dismissing the second action.

For the reasons stated above, it is **ORDERED** that Ethicon's Motion to Dismiss without Prejudice [ECF No. 10] is **DENIED**.

The Clerk is **DIRECTED** to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: March 21, 2016



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE